



U. S. Fish and Wildlife Service

Record of Decision Withdrawing the Proposed MMPA Incidental Take Regulations for the Florida Manatee

Background

Manatees are a federally protected species under both the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA). In January 2000, Save the Manatee Club and several other groups and individuals filed a lawsuit against the U.S. Fish and Wildlife Service and the Corps of Engineers alleging violations of the ESA, MMPA, National Environmental Policy Act, and Administrative Procedure Act. A settlement agreement was reached and ratified by the U.S. District Court in January 2001. Among the tasks to be accomplished is development of proposed MMPA Incidental Take Regulations to address incidental take of manatees.

The Service notified the public it was beginning the development of the proposed regulations in March 2001. We published our proposed regulations in November 2002 and opened a 60-day comment period that was extended to January 27, 2003. We also held seven public hearings in December 2002 in Florida at the following locations: Ft. Myers; Tampa; Melbourne; Daytona Beach; Palatka; Gainesville; and Fort Lauderdale. Over 3,000 people attended the hearings and over 8,000 comments were received during the comment period.

Issue

The Service's proposed rule authorized take for three of four sub populations of Florida manatees. However, based on the information received during the rulemaking process, as well as new scientific modeling data, the Service is no longer able to support this proposed rule, and because of scientific uncertainty can not authorize take for any populations at this time. We are committed to evaluating the standards and assumptions, new information, and methodologies so that any future proposal is consistent with the law and best available science.

Status

The Service selected the No Action alternative from those presented in the March 26, 2003 Final Environmental Impact Statement. We made this determination after carefully considering the various analytic methodologies and relevant information, including information received during the public comment period. The standards and assumptions, and analytic methods that we used for proposing negligible impact determinations for the Florida manatee need to be further evaluated and developed.

The Service's decision to select the No Action Alternative reflects the consideration given to the information provided by our Stakeholders, as well as the best scientific data available. It is important to note that the withdrawal of the proposed regulations will **not** result in a moratorium on all water-access facility permit applications.

The Service is rescinding the Director's Consultation Procedures Memorandum dated January 22, 2003 and will continue to work with the Corps of Engineers and others to ensure that permit applications for watercraft-access activities and facilities are authorized in a timely manner consistent with the law. New Section 7 guidance is forthcoming.

In the absence of MMPA Incidental Take Regulations, the Service, under its ESA Section 7 consultation process, will continue to review watercraft access projects, such as docks, boat ramps, and marinas, in accordance with the law and implementing regulations.

It is important to note that the Service must continue to give great scrutiny to all projects which "may affect" manatees. Because there are no MMPA take regulations in place, there continues to be a "no take" standard for manatees.

That is, the Service is precluded from authorizing incidental take of manatees in the ESA consultation process for any project that would be reasonably certain to result in take of manatees.

Questions?

In making its determinations, the Service will give consideration to State and/or local manatee protection measures, State-approved manatee protection plans, and similar measures as well as any other scientific or commercially available information including law enforcement efforts and adequacy of manatee zones and their signage.

The Record of Decision, *Federal Register* Notice of Availability, as well as the Final EIS, fact sheets and Frequently Asked Questions are available online at <http://northflorida.fws.gov>, may be requested by e-mail at manatee@fws.gov, by telephone at 904/232-2580, or by fax at 904/232-2404. If you have specific questions or need special assistance, please contact the Service's North Florida Field Office in Jacksonville at 904-232-2580 ext. 109.

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